



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2003

Ms. Donna J. Gordon
County Attorney
Houston County
401 East Houston
Crockett, Texas 75835

OR2003-8617

Dear Ms. Gordon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191945.

The Houston County Attorney (the "county attorney") received a request for information relating to a cruelty to animals case involving two named individuals, including (1) all correspondence with any individual, organization, or company received or sent by U.S. mail and (2) all correspondence with any individual, organization, or company received or sent from the e-mail address utilized by the county attorney at her office. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.¹ We also have considered the comments that we received from the requestor.²

Initially, we note your representation that the submitted information includes records that the county attorney obtained by subpoena. This request for information is specifically directed to correspondence sent or received by means of the U.S. Mail or the county attorney's official e-mail address. It does not clearly appear to this office that all of the submitted information consists of such correspondence. Any submitted documents that do not consist

¹This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the county attorney to withhold any information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

²*See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

of such correspondence are not responsive to this request for information. This decision is applicable only to the submitted information that is responsive to the request. This decision does not encompass any information that is not responsive to the request, and the county attorney need not release any such information.

You claim that the information that is responsive to the request is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the government seeks to withhold. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform us that the information to which the requestor seeks access relates to pending criminal prosecutions. You assert that the release of this information would interfere with the investigation and prosecution of these cases. Based on your representations, we find that section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, you may withhold all of the submitted information that is responsive to this request under section 552.108 of the Government Code. As we are able to make this determination, we need not address your claim under section 552.103.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

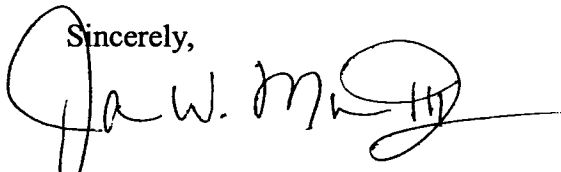
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a large, stylized initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 191945

Enc: Submitted documents

c: Mr. Ricky Minton
Route 1, Box 249
Grapeland, Texas 75844
(w/o enclosures)